

April 12, 2017

**Andrew N. Sawula**  
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**VIA FEDERAL EXPRESS AND EMAIL**

Juan Fajardo, Esq.  
Office of Regional Counsel  
New Jersey Superfund Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
17<sup>th</sup> Floor  
New York, New York 10007-1866

**Re: Diamond Alkali Superfund Site - Cash Out Settlement at Lower 8.3 Miles (OU2)  
Faber-Castell and Goody Products Facilities**

Dear Mr. Fajardo:

I represent Berol Corporation (“Berol”) (successor by merger to Faber-Castell Corporation (“Faber”)), Goody Products, Inc. (“Goody”), and their parent, Newell Brands Inc. (f/k/a Newell Rubbermaid Inc.) (“Newell”), in connection with the Lower Passaic River. I write this letter concerning United States Environmental Protection Agency’s (“EPA’s”) offer of cash out settlement, made on March 30, 2017 (“March cash out offer”), in which Berol and Goody were not included.

The March cash out offer states, “EPA has designated parties that are not associated with the disposal or release of any of those hazardous substances identified as contaminants of concern for OU2, as identified in the OU2 ROD, as parties eligible for cash out settlement.” There is no evidence, or any reason to believe, that Berol or Faber disposed of or released any contaminant of concern from Faber’s former facility at 41 Dickerson Street, Newark, NJ (the “Faber Facility”) to the Lower Passaic River, either directly or through the sewer system. Accordingly, we respectfully request that EPA include Berol in the current round of cash out settlements.

Goody, in turn, did not dispose of or release dioxins, furans or PCBs at or from its former facility located at 969 Newark Turnpike, Kearny, New Jersey (“Goody Facility”). While Goody may have generated certain other contaminants of concern from its operations, Goody’s scientific analysis has concluded that it would have been highly unlikely for any such contaminants of concern (or any other substance, for that matter) to have ever reached the Lower Passaic River. That analysis is briefly summarized in Attachment 1.<sup>1</sup> Goody respectfully requests that EPA likewise include Goody in the current round of cash out settlements. If EPA would like to further evaluate Goody’s defenses, Goody is

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<sup>1</sup> Attachment 1 to this letter includes the facility-specific discussions concerning Berol and Goody that appeared on pages 8-9 of the January 6, 2017 letter submitted to EPA by the Remote Entities Group.

Juan Fajardo  
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eager to present further supporting information at the earliest opportunity and would ask that EPA offer Goody a cash out settlement in the next round of cash out settlements.

It bears noting that Newell, itself, had no role in connection with either the Faber or Goody Facility that could give rise to liability in connection with the Lower Passaic River. EPA has issued notice letters to Newell in connection with the Goody Facility, but not the Faber Facility.<sup>2</sup> However, to ensure maximum protection under our prior agreements with EPA in connection with the investigation and clean-up of the Lower Passaic River, Newell signed on to those agreements.

Finally, I understand that other members of the Cooperating Parties Group have recently written to EPA to request information about the process employed and criteria and facts considered in determining eligibility for the cash out settlements. I ask that you please forward to me a copy of any response EPA provides to those parties.

We appreciate your prompt attention to this letter.

Sincerely,



Andrew N. Sawula

cc: Eric J. Wilson, USEPA, Region II  
Eric Schaaf, Esq., USEPA, Region II  
Kristin Holloway Jones, Esq., Newell Brands Inc.

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<sup>2</sup> As I explained in the enclosed November 24, 2003 letter to EPA, Goody operated the Goody Facility from approximately 1969 – 1994, but Newell never did. As such, we asked that EPA withdraw the September 23, 2003 notice letter from Newell. I noted in my February 6, 2004 letter to EPA (also enclosed) that Goody initially responded to the 2003 GNL in place of Newell. But Newell ultimately also participated in the EPA agreements for the reasons explained above.

**ATTACHMENT 1**

## **Facility-Specific Description from January 6, 2017 Letter to EPA**

### **Goody – Former Goody Products, Inc. Facility, 969 Newark Turnpike, Kearny, NJ**

Goody manufactured hair care accessories at a facility located at 969 Newark Turnpike, Kearny, NJ<sup>1</sup> from approximately 1969 – 1994. NJDEP issued a Conditional No Further Action Letter for the site in 2012. Goody did not use or discharge any dioxins/furans or PCBs at or from this facility, and its analysis demonstrates that it is unlikely that any hazardous substances released from its operations ever reached the Passaic River.

As Goody understands it, the alleged nexus to the Passaic is that hazardous substances were released from the facility to the Dead Horse Creek, which flows to Franks Creek, which in turn flows to the Passaic.<sup>2</sup> But that is grounded on a simple error: There are two creeks in Kearny with the name “Dead Horse Creek,” and the one that discharges to Franks Creek is over one mile from the former Goody facility.

The creek at the facility was in essence a stagnant, vegetated ditch running along the property’s western boundary. To reach the Passaic River, water leaving the property would have to travel uphill through a 12-inch pipe culvert with a nearly five-foot inversion, which would be possible, even theoretically, only under very specific hydraulic conditions. Any water completing that unlikely journey would then have to flow over one mile through expansive wetlands and marshes, creeks and culverts, to a pumping station (or during certain conditions, a gravity outlet) to reach the Passaic River. The culverts (including the inverted culvert) were frequently clogged, and the pumping station had chronic operational issues. Moreover, Goody’s analysis has revealed substantial attenuation of contaminants on-site, and enormous potential for additional attenuation of contaminants from any water that may have ever flowed off-site.

Consequently, Goody is prepared to demonstrate it is unlikely that any hazardous substances allegedly released through its operations ever reached the Passaic River.

### **Berol – Former Faber-Castell Corporation Facility, 41 Dickerson St., Newark, NJ**

Berol is the successor by merger to Faber-Castell Corporation (“Faber”), which operated a manufacturing facility at 41 Dickerson St., Newark, NJ between 1919 and 1996. In the early decades, Faber manufactured rubber bands and erasers at the facility. Over the years, Faber’s manufacturing included other rubber and vinyl products, inks, and paint. NJDEP issued a No Further Action letter for the site in 2000.

Faber did not use or discharge any dioxins/furans or PCBs at or from this facility. In fact, based on Berol’s investigation, it believes that it discharged no contaminants of concern to the Passaic River. Its industrial wastewater discharges were limited to steam condensation, boiler blowdown, and contact and non-contact cooling water. Other than sanitary waste, no solids were discharged with Faber’s wastewater. The alleged nexus to the Passaic River is via the sewer system. Berol has seen no evidence confirming any connection between its facility and the Passaic River prior to the completion of the Passaic Valley Sewerage Commission (“PVSC”) interceptor pipe in 1924. Since then, any discharges from the facility to the PVSC sewer system would have been treated at the PVSC treatment plant or, during certain conditions, allegedly discharged to the Passaic River via the Clay Street Combined Sewer Overflow (“CSO”). Notably, wastewater discharges from the facility were so low that, at the most, Berol believes they contributed only a fraction of 1% of the flow through the Clay Street CSO to the Passaic River.CH2\19441463.1

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<sup>1</sup> EPA issued a September 15, 2003 General Notice Letter to Goody’s parent, Newell Brands Inc. (f/k/a Newell Rubbermaid Inc.), but not to Goody, based upon alleged discharges from Goody’s operations at this facility.

<sup>2</sup> Both the 1973 PVSC Annual Report (which Goody understands may have informed USEPA’s nexus assessment) and Tierra and Maxus’s allegations in the now-resolved state litigation describe the “Dead Horse Creek” as a tributary of Franks Creek.

**ATTACHMENT 2**

Andrew N. Sawula  
(312) 258-5577  
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November 24, 2003

**VIA FACSIMILE & U.S. MAIL**

Kedari Reddy  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

**Re: Notice of Potential Liability for Response Actions in the Lower Passaic River, New Jersey**

Dear Ms. Reddy:

On September 23, 2003, Newell Rubbermaid, Inc. ("Newell") received the above referenced Notice of Potential Liability (the "Notice"). In the Notice, EPA alleges that Newell has a nexus to the Diamond Alkali Superfund Site (the "Site") through releases of "hazardous substances ... from the former Goody Products facility located at 969 Newark Turnpike in Kearny, New Jersey" (the "Facility").

I am writing on Newell's behalf to inform you that Newell never owned or operated the Facility. Goody Products, Inc. ("Goody") operated, but did not own, the Facility for a period of time between the late-1960s and the mid-1990s. Goody is a wholly-owned subsidiary of Newell. Goody is headquartered at 400 Galleria Parkway, Suite 1100, Atlanta, GA 30339. Howard Heckes is Goody's President.

Since Goody operated the Facility that EPA alleges has a nexus to the Site, please withdraw the Notice that EPA issued to Newell and, instead, issue the Notice to Goody. Newell makes this request without waiving any of its or Goody's defenses. By way of example, and not by limitation, neither Newell nor Goody admit that (1) Goody directly discharged water from the Facility to the Lower Passaic River or one of its tributaries, (2) any hazardous substances were released from the Facility to the Lower Passaic River, or (3) that the Facility has any other Nexus to the Site.

If you have any questions regarding this request, please do not hesitate to contact me directly. I thank you in advance for your assistance with this matter.

Sincerely,

Andrew N. Sawula

cc: Howard Heckes  
Louis Meschede  
Lori Prokes

Kedari Reddy  
November 24, 2003  
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Gabriel M. Rodriguez

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**ATTACHMENT 3**



Andrew N. Sawula  
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Email: asawula@schiffhardin.com

February 6, 2004

**VIA FACSIMILE & U.S. MAIL**

Kedari Reddy  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

**Re: Notice of Potential Liability for Response Actions in the Lower Passaic River, New Jersey**

Dear Ms. Reddy:

Thank you very much for returning my telephone-call so quickly yesterday evening. As you recall, we discussed the letter that I sent you on November 24, 2003 on behalf of Newell Rubbermaid, Inc. ("Newell"), requesting that EPA withdraw the above referenced Notice of Potential Liability (the "Notice") from Newell and, instead, issue the Notice to Goody. In that letter, which I have enclosed for your convenience, I explained Newell's reasons for the request. Pursuant to our conversation, I am writing to confirm that Goody Products, Inc. ("Goody") will be responding to the Notice that EPA issued to Newell. Additionally, Newell renews its request for EPA to withdraw the Notice from Newell and reissue the Notice to Goody.

As I previously noted, Newell makes this request without waiving any of its or Goody's defenses. By way of example, and not by limitation, neither Newell nor Goody admit that (1) Goody directly discharged water from the Goody Facility to the Lower Passaic River or one of its tributaries, (2) any hazardous substances were released from the Facility to the Lower Passaic River, or (3) that the Facility has any other Nexus to the Site.

Kedari Reddy  
February 6, 2004  
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I will be representing Goody in connection with this matter. If you have any questions regarding this request, please do not hesitate to contact me directly. I thank you, again, for your assistance with this matter.

Sincerely,

Andrew N. Sawula

ANS/dm  
Enclosure

cc: Howard Heckes  
Lori Prokes  
Louis Meschede  
William Hyatt  
Gabriel M. Rodriguez